

A REGULATION ELIMINATING SMOKING IN WORKPLACES AND PUBLIC PLACES

Effective 02/26/10

Sec. 1000. Title

This regulation shall be known as the Cabell County Clean Indoor Air Regulation of 2010.

Sec. 1001. Findings and Purpose

The Cabell-Huntington Board of Health does hereby find that:

Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke is a cause of disease, including lung cancer, in nonsmokers. At special risk are children, elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease; and

Health hazards induced by breathing secondhand smoke include lung cancer, heart disease, respiratory infection, and decreased respiratory function, including bronchoconstriction and bronchospasm. On June 27, 2006 the Surgeon General of the United States reported that scientific evidence indicates that there is no safe level of secondhand (passive) smoke.

Accordingly, the Cabell-Huntington Board of Health finds and declares that the purposes of this regulation are (1) to protect the public health and welfare by prohibiting smoking in public places and places of employment; and (2) to guarantee the right of nonsmokers to breathe smoke free air, and to recognize that the need to breathe smoke free air shall have priority over the desire to smoke.

Sec. 1002. Definitions

The following words and phrases, whenever used in this regulation, shall be construed as defined in this section:

1. "Business" means any sole proprietorship, partnership, joint venture, corporation or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural or other professional services are delivered.

2. “Employee” means any person who is employed by any employer in the consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services for a non-profit entity.

3 “Employer” means any person, partnership, corporation, including a municipal corporation, or non-profit entity, who employs the services of one or more individual persons.

4. “Enclosed Area” means all space between a floor and ceiling which is under roof and enclosed on 3 or more sides by solid walls or windows (exclusive of door or passage ways) which extend from the floor to the ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid, “office landscaping” or similar structures.

5. “Healthcare Facilities” means an office or institution providing care or treatment of diseases, whether physical, mental, emotional, or other medical, physiological, or psychological conditions including but not limited to, hospitals, rehabilitation hospitals, weight control, laboratories, offices of surgeons, chiropractors, physical therapists, physicians, dentists and all specialists within these professions. “Healthcare Facility” includes all waiting rooms, hallways, private rooms, semiprivate rooms, and any adjacent outdoor property under their control.

6. “Place of Employment” means any area under the control of a public or private employer which employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges and restrooms, conference and class rooms, employee cafeterias and hallways. A private residence is not a “place of employment” unless it is used as a child care, adult day care or health care facility.

7. “Public Place” means any enclosed area to which the public is invited or in which the public is permitted, including but not limited to, banks, educational facilities, health facilities, Laundromats, public transportation facilities, reception areas, bars, restaurants, retail food production and marketing/grocery establishments, retail service establishments, retail stores, theaters, outdoor service lines and bingo halls that distribute less than 100 bingo cards or bingo sheets. A private residence is not a “public place.”

8. “Restaurant” means any coffee shop, cafeteria, sandwich stand, private and public school cafeteria, and any other eating establishment which gives or offers for sale food to the public, guests, or employees, as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities.

9. “Retail Tobacco Store” means a retail store utilized primarily for the sale of tobacco products and accessories, and in which the sale of other products is merely incidental.

10. “Service Line” means any indoor line at which one (1) or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.

11. “Smoking” means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe, weed, plant or other combustible substance in any manner or in any form.

12. “Sports Arena” means sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys and other similar places where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events.

13. A “private function” shall be defined as a function in which no fee is charged and no tickets are sold, and no public announcements are made to the event and/or function.

14. Healthcare Facilities does not include Personal Care Homes, Assisted Living Facilities or Residential Board Facilities where they are grandfathered under the West Virginia Supreme Court of Appeals ruling of December 2, 2003.

Sec. 1003. Application of this Regulation to City-Owned [County-Owned] Facilities

All enclosed facilities including buildings and vehicles owned by Cabell County shall be subject to the provisions of this regulation

Sec. 1004. Prohibition of Smoking in Public Places

A. Smoking shall be prohibited in all enclosed public places within Cabell County, including, but not limited to, the following places:

1. Elevators.
2. Restrooms, lobbies, reception areas, hallways and any other common-use areas.
3. Buses, taxicabs, and other means of public transit under the authority of Cabell County, and ticket, boarding, and waiting areas of public transit depots.
4. Service lines.
5. Retail stores.
6. All areas available to and customarily used by the general public in all businesses and non-profit entities patronized by the public, including but not limited to, attorneys’ offices and other offices, banks, laundromats, hotels, motels, bars and video lottery rooms.
7. Restaurants, (including outdoor seating areas).
8. Public areas of aquariums, galleries, libraries and museums.

9. Any facility which is primarily used for exhibiting any motion picture, stage, drama, lecture, musical recital or other similar performance.
10. Sports arenas and convention halls, including bowling facilities.
11. Every room, chamber, place of meeting or public assembly, including school buildings under the control of any board, council, commission, committee, including joint committees, or agencies of Cabell County or any political subdivision of the State during such time as a public meeting is in progress, to the extent such place is subject to the jurisdiction of Cabell County.
12. Waiting rooms, hallways, wards, private and semiprivate rooms of health facilities, including, but not limited to, hospitals, clinics, physical therapy facilities, doctors' offices, dentists' offices, and any other health care providers.
13. Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
14. Polling places.
15. Bingo halls that distribute less than one hundred bingo cards or bingo sheets as allowed under WV Code Section 47-20-281, as stipulated by the WV State Supreme Court of Appeals, December 2, 2003.
16. Auction houses, indoor flea markets and enclosed shopping malls.

B. Notwithstanding any other provision of this section, any owner, operator, manager or other person who controls any establishment or facility may declare that entire establishment, facility, or property as a nonsmoking establishment.

C. In any dispute arising under this regulation, the health concerns of the nonsmoker shall be given precedence.

Sec. 1005. Prohibition of Smoking in Places of Employment

- A. It shall be the responsibility of employers to provide a smoke free workplace for all employees.
- B. Within 30 days of the effective date of this regulation, each employer having an enclosed place of employment located within Cabell County shall adopt, implement, make known and maintain a written smoking policy which shall contain the following requirements:

Smoking shall be prohibited in all enclosed facilities within a place of employment without exception. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles, and all other enclosed facilities.

- C. The smoking policy shall be communicated to all employees within three (3) weeks of its adoption.
- D. All employers shall supply a written copy of the smoking policy upon request to any existing or prospective employee.

Sec. 1006. Reasonable Distance

Designated smoking areas shall occur at a reasonable distance of 20 feet or more outside any entrance, exit, or ventilation units of any enclosed area where smoking is prohibited to insure that tobacco smoke does not enter the area through entrances, windows, ventilation systems or any other means.

Sec. 1007. Where Smoking Not Regulated

- A. Notwithstanding any other provision of this regulation to the contrary, the following areas shall be exempt from Sec.1005:
 - 1. Private residences, except when used as a child care, adult day care or health care facility, or homes that are registered with West Virginia Department of Health as a Personal Care Home or Residential Board Facility.
 - 2. No more than twenty-five percent (25%) of hotel and motel rooms rented to guests.
 - 3. Bingo halls that distribute more than one hundred bingo cards or bingo sheets as allowed under WV Code Section 47-20-281, as stipulated by the WV State Supreme Court of Appeals, December 2, 2003.
 - 4. Residents, prior to September 4, 2003, of personal care homes, assisted living facilities or residential board facilities, who had smoking privileges under WV 64CSR 14-8.12.3 as stipulated by the WV State Supreme Court of Appeals, December 2, 2003.
 - 5. Outdoor areas of places of employment except those covered in Section 1006 of this regulation.

- B. Notwithstanding any other provision of this section, any owner, operator, manager or other person who controls any establishment described in this section may declare that entire establishment as a nonsmoking establishment.

Sec. 1008. Posting of Signs

- A. “No Smoking” signs or the international “No Smoking” symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly and conspicuously posted in every building or other area where smoking is prohibited by this regulation, by the owner, operator, manager or other person having control of such building or other area.
- B. Every public place where smoking is prohibited by this regulation shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.
- C. All ashtrays and other smoking paraphernalia shall be removed from any area where smoking is prohibited by this regulation by the owner, operator, manager or other person having control of such area.

Sec. 1009. Enforcement

- A. Any owner, manager, operator or employee of any establishment regulated by this regulation shall inform persons violating this regulation of the appropriate provisions thereof.
- B. Enforcement of this regulation shall be implemented by the Cabell-Huntington Health Department, or his or her designee.
- C. Notice of the provisions set forth in this regulation shall be given to all applicants for a business license in Cabell County.
- D. Any citizen who desires to register a complaint under this chapter may initiate enforcement with the Cabell-Huntington Health Department.
- E. The Health Department shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance of this regulation.

Sec. 1010. Non-retaliation

No person or employer shall discharge, refuse to hire or in any manner retaliate against any employee, applicant for employment, or customer because such employee, applicant, or customer exercises any right to a smoke free environment afforded by this regulation

Sec. 1011. Violations and Penalties

- A. It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to this regulation to fail to comply with any of its provisions.
- B. It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this regulation.
- C. Any person who violates any provision of this regulation shall be guilty of a misdemeanor under Chapter 16 of the West Virginia State Laws. Penalty will be as set forth by Chapter 16-2-15 of the West Virginia State Laws which states:

§16-2-15. Obstructing local health officers and others in the enforcement of public health laws; other violations; penalties.

Any person who willfully obstructs any local health officer, public health nurse, sanitarian or any other person charged with the enforcement of any public health law, in the performance of that person's legal duties in enforcing the law, is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than fifty dollars and not more than five hundred dollars.

Any person who willfully violates any of the provisions of this regulation, or any of the rules or orders adopted or issued pursuant to the provisions, for which a penalty is not otherwise provided, is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than two hundred dollars and not more than one thousand dollars.

Magistrates have concurrent jurisdiction with the circuit courts of this state for violations of the provisions of this regulation.

- D. A letter of notification shall be sent to the Commissioner of the State Alcohol Beverage Control Administration or other appropriate government agencies with jurisdiction to identify any person convicted for being in violation of the Health Department's rules & regulations included in the provisions of this clean indoor air regulation.

Sec. 1012. Public Education

The Cabell-Huntington Health Department shall engage in a continuing program to explain and clarify the purposes and requirements of this ordinance to citizens affected by it, and to guide owners, operators and managers in their compliance with it. Such program may include publication of a brochure for affected businesses and individuals explaining the provisions of this regulation.

Sec. 1013. Other Applicable Laws

This regulation shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

Sec. 1014. Severability

If any provision, clause, sentence or paragraph of this regulation or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this regulation which can be given effect without the invalid provision or application, and to this end the provisions of this regulation are declared to be severable.

Sec. 1015. Effective Date

This regulation shall be effective thirty (30) days from and after the date of its adoption.

Adopted 01/27/10
Cabell-Huntington Board of Health